IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6753 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT

Versus

MAGANLAL NANJIBHAI C/O MK PATEL

Appearance:

1. Special Civil Application No. 6753 of 1999

MR IM PANDYA AGP for Petitioner No. 1

MR KISHOR M. PAUL for MR SANDEEP N BHATT

for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 07/08/2001

ORAL JUDGEMENT

1. This petition is one more instance of the pathetic lack of concern and perseverance in the litigations as displayed by the officers concerned of the Roads and Building Department of the State Government as

also the advocates appointed by the Government.

2. By way of this petition, the petitioner-State of Gujarat, through an officer of the rank of Deputy Executive Engineer, seeks to challenge the award of the Labour Court, Rajkot in Reference (LCR) No.277 of 1987 whereby the respondent-workman is ordered to be reinstated with full backwages from 31.1.1986. The award is dated 23.12.1998. The impression of the shocking state of affairs is further extenuated after perusal of the record and proceedings of the original reference case of the Labour Court, Rajkot, which were called for and examined.

3. It is revealed from the record that by the statement of claim dated 2.7.1987 the respondent-workman firstly approached the Court with a case that after serving for about three years, he was discharged from service of the petitioner from 31.1.1986. Thereafter, by an amendment, the date of termination was changed to 31.5.1982. After notices of the Labour Court, the petitioner took its own time in filing the written statement dated 19.2.1990. The proceedings before the Labour Court went on for years, during which the learned advocate of the petitioner does not seem to have appeared except for filing the written statement and even without him, most of the adjournments were sought on the part of the respondent. Only on the basis of the sketchy solitary oral evidence of the respondent, the opportunity to cross-examine whom was also not taken on behalf of the petitioner, the impugned award was made. The petitioner, however, was at pains to submit through certain statements and correspondence produced before the Court that the respondent-workman had intermittently worked under different departments only upto 31.5.1982. The change of date of the alleged termination by amending the statement of claim by the respondent could have been examined in that context. However, without proper application of mind and in absence of any evidence worth the name or arguments from the petitioner, the impugned award as above was made. The petitioner has made an absolutely incorrect and reckless statement in the petition while averring that a Deputy Executive Engineer had deposed before the Labour Court on 24.6.1986.

4. In the background of facts as above, the learned counsel for the respondent fairly conceded that the reference was required to be reopened and heard on merits provided the petitioner were to participate and cooperate in the proceedings. In view of this concession and in the hope that the petitioner shall defend the case and

properly participate in the proceedings before the Labour Court by producing the necessary evidence and ensuring that an advocate attends the case in the Court, the matter requires to be remanded without entering into its merits to save the undue burden on the public exchequer. The learned Assistant Government Pleader Mr.I.M.Pandya stated at the Bar that appropriate actions pursuant to the hope expressed hereinabove shall be taken by the petitioner and the petitioner shall, as far as may be, proceed with the original reference in such a way that the proceedings may be concluded at the earliest and preferably within four months from today.

5. In these facts and circumstances and for the above reasons, the petition is allowed to the extent that the impugned award and order of the Labour Court, Rajkot dated 23.12.1998 in Reference (LCR) No.277 of 1987 is set aside and the original Reference (LCR) No.277 of 1987 is remanded to the Labour Court, Rajkot for further hearing on merits and for allowing an opportunity to the parties to lead their further evidence. In the peculiar facts and circumstances, the petitioner is ordered to pay to the respondent Rs.2,500/- by way of costs, which, it will be open for the State Government to recover from the persons concerned who had neglected to attend the proceedings before the Labour Court. Rule is made absolute accordingly. Record and proceeding shall be returned to the Labour Court, Rajkot, forthwith.

Sd/-

07.8.2001 (D.H.Waghela, J.)

(KMG Thilake)